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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 THEODORE A. PINNOCK, et al.,) Civil No. 07cv204-LAB(NLS)
11)
12 Plaintiffs,) **NOTICE AND ORDER SETTING**
13 v.) **TELEPHONIC EARLY NEUTRAL**
14 DG WILLS BOOKS, et al.,) **EVALUATION CONFERENCE**
15 Defendants.)
_____)

16 **IT IS HEREBY ORDERED** that an Early Neutral Evaluation (“ENE”) of your case will be
17 held *telephonically* on June 13, 2007 at 9:30 a.m. before Magistrate Judge Nita L. Stormes. Counsel
18 for plaintiff(s) shall be responsible for initiating the *telephonic* ENE. The purpose of the ENE is to
19 permit an informal discussion between the attorneys, parties, and the settlement judge of every aspect of
20 the lawsuit in an effort to achieve an early resolution of the case. All conference discussions will be
21 informal, off the record, privileged and confidential. Counsel for any non-English speaking parties is
22 responsible for arranging for the appearance of an interpreter at the conference. **Absent extraordinary**
23 **circumstances, requests for continuances will not be considered *unless* submitted in *writing* no less**
24 **than seven (7) days prior to the scheduled conference.**

25 All parties, adjusters for insured defendants, and other representatives of a party having full and
26 complete authority to enter into a binding settlement, and the principal attorneys responsible for the
27 litigation, must be present *by telephone* and must be legally and factually prepared to discuss settlement
28 of the case. Full authority to settle means that the individuals at the ENE be authorized to fully explore

1 settlement options and to agree at that time to any settlement terms acceptable to the parties. *Heileman*
 2 *Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have
 3 “unfettered discretion and authority” to change the settlement position of a party. *Pitman v. Brinker*
 4 *Int’l, Inc.*, 216 F.R.D. 481, 485-486 (D. Ariz. 2003). One of the purposes of requiring a person with
 5 unlimited settlement authority to attend the conference is that the person’s view of the case may be
 6 altered during the face-to-face conference. *Pitman*, 216 F.R.D. at 486. Limited or sum certain authority
 7 is not adequate. *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590, 595-597 (8th Cir. 2001). Counsel
 8 appearing without their clients (whether or not counsel has been given settlement authority) will be
 9 cause for immediate imposition of sanctions and will also result in the immediate termination of the
 10 conference. Sanctions will include, but will not be limited to, the attorney’s fees and travel costs of the
 11 other parties in the case.

12 **Based upon the Court’s familiarity with these matters and in the interest of promoting the**
 13 **just, efficient and economical determination of this action, the Court hereby issues the following**
 14 **Mandatory Procedures to be followed by the parties in preparing for the ENE.**

- 15 1. All Formal Discovery is stayed until the completion of the ENE.
- 16 2. No later than **May 16, 2007**, plaintiff’s counsel shall serve on opposing counsel and lodge
 17 with Magistrate Judge Stormes’ chambers a statement, ***not in excess of five pages***, including:
 - 18 (a) An itemized list of all claimed violations of the Americans with Disabilities Act
 19 on the subject premises;
 - 20 (b) A statement of the amount of damages claimed by plaintiff in this action and by
 21 what legal authority plaintiff is entitled to such damages;
 - 22 (c) The amount claimed for attorney’s fees and costs; and
 - 23 (d) The plaintiff’s demand for settlement of the case in its entirety.
 - 24 (e) Plaintiff’s statement shall include as an attachment, any expert or consultant
 25 report regarding the premises and the alleged violations. In addition, at the ENE, plaintiff’s counsel shall
 26 be prepared to present for *in camera* review, documentation in support of the amount of attorney’s fees
 27 and costs claimed.

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NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE

IN ACCORDANCE WITH THE PROVISIONS OF 28 U.S.C. § 636(c), YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE JUDGE OF THIS DISTRICT MAY, UPON THE CONSENT OF ALL PARTIES, ON FORM 1A AVAILABLE IN THE CLERK'S OFFICE, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. COUNSEL FOR THE PLAINTIFF SHALL BE RESPONSIBLE FOR OBTAINING THE CONSENT OF ALL PARTIES, SHOULD THEY DESIRE TO CONSENT.

YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT TO CONSENT IS ENTIRELY VOLUNTARY. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE JUDGE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.

JUDGMENTS OF THE U.S. MAGISTRATE JUDGES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.